

CHAPTER 12: APPENDIX

NEGOTIATION SKILLS

I. INTRODUCTION

- A. Negotiation is a fact of life. Everyone negotiates something every day.
 - 1. Any method of negotiation may be judged by three criteria:
 - a. Should produce wise agreement if agreement is possible;
 - b. Should be efficient;
 - c. Should improve or at least not damage the relationship between the parties.
 - 2. Negotiation takes place on two levels:
 - a. Addresses the substance;
 - b. Focuses on the procedure for dealing with the substance.
 - 3. Negotiations often viewed as either:
 - a. “Hard”
 - (1) participants are adversaries
 - (2) goal is victory
 - (3) demand concessions as a condition of the relationship

(4) distrust others search for the single answer: the one *you* will accept

(5) try to win a contest of wills

(6) apply pressure

b. “Soft”

(1) participants are friends

(2) goal is agreement

(3) make concessions to cultivate the relationship

(4) be soft on the people and the problem

(5) trust others

(6) change your position easily

(7) make offers

(8) search for the single answer: the one *they* will accept

(9) insist on agreement

(10) try to avoid contest of will

(11) yield to pressure

4. Dangers of “positional” negotiations:

a. Produces unwise agreements.

- (1) Positions tied to ego.
 - (2) Negotiators locked into positions.
 - (3) As more attention is paid to positions, less attention devoted to meeting the underlying concerns of the parties.
 - b. Arguing over positions is inefficient.
 - (1) Incentives to stall settlement.
 - (2) Agreement requires concession.
 - c. Endangers ongoing relationships.
 - (1) Contest of will.
 - (2) Anger/resentment may result from concessions required to reach agreement.
 - d. Multi-party negotiation complicate positional bargaining.
 - (1) Varying positions make “common” position difficult.
 - (2) Changing position difficult.
5. Additional method of negotiations—“Principled negotiations.”
- a. Four basic points:
 - (1) Separate the people from the problem.
 - (2) Focus on interests, not positions.

(3) Generate a variety of possibilities before deciding what to do.

(4) Insist that the result be based on some objective standard.

b. Seven Elements:

(1) Interests

(2) Options

(3) Alternatives

(4) Legitimacy

(5) Communication

(6) Relationship

(7) Commitment

II. PRINCIPLED NEGOTIATION METHOD

A. Separate the People from the Problem.

1. Negotiators on both sides of the issue bring emotion, perceptions, and values to the negotiations.

2. Misunderstandings or personal perceptions of “facts” of negotiation may lead to reactions that produce counter-reactions that leads to failure of negotiation.

a. Discussions of substance entangled with emotions of issue.

- (1) Statement may be intended to identify a problem but may be heard as an attack.
- (2) People draw inferences from comments that become “facts” about other individual’s intentions and attitudes.

3. Perceptions.

- a. Conflict lies in each side’s perception of the problem.
- b. Ability to see the situation as the other side sees it is one of the most important skills a negotiator can possess.
- c. Understanding other side’s position does not mean agreeing with it.
- d. One way to deal with differing perceptions is to make them explicit and discuss them.
- e. Look for opportunities to act inconsistently with other side’s perceptions—may lead to change of perceptions.
- f. Allow “face-saving”—reconciling an agreement with principle and self-image of the negotiators.

4. Emotions.

- a. Recognize and understand emotions—yours and theirs.
 - (1) Identify source of emotions;
 - (2) Make emotions explicit and acknowledge them as legitimate.
- b. Allow other side to let off steam.

- (1) Listen without responding;
- (2) Don't react to emotional outbursts.

c. Use symbolic gestures.

- (1) Apology can defuse emotions;
- (2) Even when don't acknowledge personal responsibility.

5. Communication.

a. Three problems:

- (1) Negotiators may not be talking to each other.
- (2) Other side may not be hearing you.
- (3) Misunderstanding.

b. Solutions:

- (1) Listen actively.
- (2) Acknowledge what other side is saying.
- (3) Acknowledgement is not agreement.
- (4) Talk—don't debate.
- (5) Speak about yourself--not about them.
- (6) Speak with a purpose.

- B. Focus on interests, not positions.
1. Interests define the problem.
 - a. Identify the relevant parties.
 - b. “Whose decision do I want to affect?”
 2. Look for the interests behind the position.
 - a. Why does party hold that position?
 - b. Ask why not?—why hasn’t other side taken the action you desire?
 3. Look for conflicting as well as shared interests.
 4. Each side has multiple interests.
 5. Prioritize your interests—consider the other side’s priorities as well.
 - a. The most powerful interests are basic human needs.
 - b. Negotiations are not likely to make progress if one side believes basic human needs threatened.
 6. Help the other side understand how important and legitimate your interests are.
 - a. Be specific.
 - b. Set forth the seriousness of your concerns, without implying other side’s interests are unimportant.

7. Acknowledge their interests as part of the problem.
 - a. Demonstrate understanding of their interests.
 - b. Highlight shared interests.
8. Be concrete, yet flexible.
 - a. While not tied to a position, must be committed to the interests.
 - b. Remain flexible to solution that satisfies interests.

C. Invent Options for Mutual Gain.

1. Four major obstacles that inhibit invention of options:
 - a. Premature judgment;
 - b. Searching for the single answer;
 - c. Assumption of a fixed pie;
 - d. Thinking that “solving the problem is their problem.”
2. Four basic steps for inventing options:
 - a. Step 1: define the problem.
 - b. Step 2: Analysis—diagnose causes of the problem.
 - c. Step 3: Approaches—what are possible strategies?
 - d. Step 4: Action ideas.

3. Inventing creative options.
 - a. Separate the act of inventing options from the act of judging them.
 - (1) Brainstorming:
 - (a) Define purpose.
 - (b) Choose a few participants.
 - (c) Clarify ground rules—including no criticism rule.
 - (2) Post-brainstorming:
 - (a) Identify most promising ideas.
 - (b) Invent improvement of promising ideas.
 - (c) Evaluate ideas and decide.
 - b. Broaden the options on the table rather than looking for a single answer.
 - (1) Examine problem from view of different professionals and disciplines.
 - (2) Invent agreements of different strengths.
 - (3) Change scope of proposed agreement.
 - c. Look for mutual gain.
 - (1) Identify shared interests.

- (a) Shared interests lie latent in every negotiation.
 - (b) Shared interests are opportunities.
 - (c) Stressing shared interests can make the negotiation smoother.
 - (2) Dovetail differing interests.
 - (a) Different beliefs?
 - (b) Different values placed on time?
 - (c) Different forecasts?
 - (d) Differences in aversion to risk?
 - d. Make their decision easy.
 - (1) Without some option that appeals to other side there will be no agreement.
 - (2) Option must be viewed as legitimate.
- D. Insist on using objective criteria.
- 1. How do you develop objective criteria?
 - a. Independent of either side's will.
 - (1) Fair standards for the substantive question; or
 - (2) Fair procedure for resolving conflicting interests.

- b. Apply to both sides.

E. Alternatives.

1. Alternatives are other ways of satisfying interests.
2. Best Alternative To a Negotiated Agreement (BATNA).
 - a. Absolutely essential to know whether to accept alternative arrived at through negotiation versus ending negotiation.
 - b. Must consider other side's BATNA as well as your own.
 - c. Develop your BATNA:
 - (1) Invent a list of actions possible if no agreement.
 - (2) Improve some of ideas from list, create practical alternatives.
 - (3) Select the alternatives that seem best.
 - d. Strengthen your BATNA:
 - (1) How can you make BATNA easier, more probable, or better at satisfying interest.
 - (2) If you only accept a deal that is better than BATNA, improving BATNA leads to better result, either through better agreement or going to the BATNA.
 - e. Consider their BATNA:
 - (1) Understanding BATNA helps you understand how to make agreement easier.

- (2) Understanding their BATNA allows you to estimate whether agreement is possible.
- f. Reservation Value: Translation of the BATNA into a value at the table—the amount at which you are indifferent between reaching a deal and walking away to your BATNA.
- g. Zone of Possible Agreement (ZOPA): the bargaining range created by the two reservation values. The ZOPA defines a “surplus” that must be divided between the parties.

III. GETTING TO AGREEMENT

- A. When other side won’t play (hardball negotiator or positional negotiator insistent on asserting position only).
 - 1. Goal is to focus negotiator on merits (away from position).
 - 2. How? Three approaches:
 - a. You continue to focus on merits, rather than positions.
 - b. Counter positional bargaining to direct attention to merits (“negotiation jujitsu”).
 - c. Include a third party to focus discussion.
 - 3. Negotiation Jujitsu.
 - a. Typically, positional bargainer will use three maneuvers:
 - (1) Forcefully assert positions.
 - (2) Attack ideas.

- (3) Attack negotiator.
- b. When positional bargainer asserts position, look behind position to identify interests.
- c. When positional bargainer attacks your ideas, invite criticism and advice.
 - (1) Use their negative judgments to find out their underlying interests and improve your ideas from their point of view.
 - (2) Channel criticism in a constructive direction by turning situation around and asking for opponent's advice—"what would you do in this situation?"
- d. Recast attacks on you as an attack on the problem.
 - (1) Resist temptation to defend or counter-attack.
 - (2) Allow opponent to let off steam, acknowledge understanding of their point, recast as an attack on the problem.
- e. Two key tools:
 - (1) Use questions instead of statements.
 - (a) Questions offer no position to attack.
 - (b) Questions do not criticize, they educate.
 - (2) Use silence.
 - (a) People tend to feel uncomfortable with silence, especially when they have doubts of the merit of their position.

- (b) Silence creates impression of a stalemate, which other side may feel compelled to break with statement or suggestion.

4. Using a third party—the “one-text procedure.”

- a. Third party explores interests of each party.
- b. Third party devises draft solution.
- c. Present draft solution to each party—each party offers criticism of draft.
- d. Third party revises draft until reaches “final” version.
- e. Offers final version to each party with one decision—“yes” or “no” to the proposal. “Yes” decisions may be made contingent on other side making “yes” decision.
- f. One-text procedure useful in multi-party negotiations to garner mutual agreement.

B. Tactics—“Changing the Game.”

1. Recognizing Hard-Bargaining Tactics:

- a. Extreme claims, followed by small, slow concessions.
 - (1) Most common of hard-bargaining tactics.
 - (2) Tactical advantage includes influencing opponent’s valuation of settlement range.
 - (3) Tactical disadvantage—risk of no settlement.
- b. Commitment Tactics.

(1) One party persuades other that there is no freedom of choice with respect of a particular issue.

(2) Risks:

(a) If both parties are locked in, no freedom on either side—no chance of deal.

(b) Perception of pre-determined commitment damages relationships between parties.

c. “Take it or Leave it” Offers.

(1) One party threatens to end negotiation if offer is not accepted.

(2) Boulwarism—no haggling.

(3) Exploding offer—“take it today or it’s gone.”

(4) Risk—if both sides play, no deal.

2. Changing the game.

a. Stay with your game—don’t let hard-bargainer inhibit you from staying focused on your interests.

b. “Name the Game.”

(1) Share your perceptions of what the other party is doing. “You’re essentially saying, take it or leave it.”

(2) Show that you can play the same game. “I could report that my client insists on a certain provision....we can both dig in and play chicken to see who blinks first.”

- (3) Initiate a conversation about another process that might work better from the perspective of both parties. “Instead, I think our shared problem iswhat can we do to set up a process to solve this mutual problem?”

c. Change the players.

- (1) Can change the players by removing certain parties (attorney, negotiator); or
- (2) Can add neutral third party to assist.

C. Getting past “No”—another strategy for getting to a mutually satisfactory agreement. Five steps of “Breakthrough Strategy.”

1. “Go to the Balcony.”

a. Suspend natural reactions—three common reactions:

- (1) Striking back;
- (2) Giving In;
- (3) Breaking Off.

b. “Going to the balcony,” means distancing yourself from your natural impulses and emotions—this keeps you focused on the ultimate goal—a deal that is better than your BATNA.

c. Some tactics:

- (1) Recognize the tactic.
- (2) Know your hot buttons.

- (3) Pause and Say Nothing.
- (4) Rewind the tape.
- (5) Take a time-out.
- (6) Don't make important decisions on the spot.

2. Step to their side.

a. Stepping to their side means doing three things:

- (1) Listen to what the other party has to say;
- (2) Acknowledge their point, their feelings and their competence and status;
- (3) Agree with them whenever possible.

b. Listen Actively.

- (1) Listening may be the cheapest concession you can make.
- (2) Listening requires patience and self-discipline.
- (3) Effective negotiators listen more than they talk!
- (4) It is not enough just to listen, you must communicate that you have *heard* what the other party said—do this by paraphrasing and asking for corrections.

c. Acknowledge their point.

(1) Acknowledging does not mean agreeing with the other party's point.

(2) Acknowledging means that you view the other side's point as one valid point of view among others.

d. Acknowledge their feelings.

(1) Behind an opponent's position often lies emotions.

(2) Caution: an insincere acknowledgment is easy to spot. Body language and tone count just as much as words.

(3) Offer an apology.

e. Agree whenever you can.

(1) Agree without conceding.

(2) Accumulate Yeses.

(a) Changes relationship between the parties.

(b) Each yes reduces tension.

3. Reframe:

a. Reframing works because every message is subject to interpretation.

b. You have the power of positive perception—the ability to put a problem-solving frame around whatever the other side says.

c. Reframing techniques:

- (1) Ask problem solving questions—"Why?"; "Why Not?"; "What If?"
- (2) Ask for the other party's advice.
- (3) Ask "What makes that fair?"
- (4) Use open-ended questions.
- (5) Tap the power of silence.
- (6) Deflect attacks by changing attack on you to an attack on the problem.
- (7) Expose tricks (See "Name the Game," above).

4. Build them a golden bridge.

- a. Instead of pushing the other side toward an agreement, you need to reframe a retreat from their position as an advance toward a better solution.
- b. Start from where the other side is in order to guide him toward eventual agreement.
- c. Building a golden bridge makes it easier for the other side to surmount the four common obstacles to agreement.
 - (1) Not their idea;
 - (2) Unmet interests;
 - (3) Fear of losing face;

- (4) Too much too fast.
- d. Involve the other side.
 - (1) Ask for and build on other side's ideas.
 - (2) Ask for constructive criticism.
 - (3) Offer them a choice.
- e. Satisfy unmet needs.
 - (1) Resistance often stems from unmet needs.
 - (2) Don't dismiss needs as irrational.
 - (3) Don't overlook basic human needs.
 - (4) Don't assume a fixed pie.
 - (a) Look for low-cost, high-benefit trades.
 - (b) Use an "if-then" formula.
- f. Help other side save face.
 - (1) Help them back away without backing down.
 - (a) Show how circumstances have changed.
 - (b) Ask for third-party recommendation.
 - (c) Point to a standard of fairness.

- g. Don't rush to the finish.
5. Don't Escalate: Use Power to Educate.
 - a. Often, when negotiations are frustrating, parties switch from problem solving game to power game.
 - b. Use power to educate that only way for them to win is for both sides to win.
 - (1) Let them know the consequences.
 - (2) Ask reality-testing questions.
 - (a) "What do you think will happen if we don't agree?"
 - (b) "What do you think I will do?"
 - (c) "What will you do?"
 - (3) Warn, don't threaten.
 - (4) Demonstrate your BATNA.
 - (5) Remind opponent of golden bridge.

IV. FORGE A LASTING AGREEMENT

1. Don't ignore implementation.
2. Design deal to minimize risks.
3. Build in dispute resolution procedures.